

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF PUERTO RICO

IN RE:

FERNANDO VIGIL FERNANDEZ
CLARISSA PIOVANETTI LOPEZ DE
VICTORIA

Debtor(s)

UNITED STATES FIDELITY AND
GUARANTY COMP

Plaintiff

FERNANDO VIGIL FERNANDEZ
CLARISSA PIOVANETTI LOPEZ DE
VICTORIA

Defendant(s)

CASE NO. 12-08024 ESL
CHAPTER 7

ADVERSARY NO. 13-00140 ESL

FILED & ENTERED ON 11/27/2013

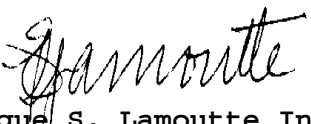
AMENDED ORDER

The motion filed by Plaintiff (docket #15) is hereby DENIED. Plaintiff's motion again recounts the travel of the bankruptcy case but fails to address the reason(s) or cause(s) that justify the failure to serve summons on the defendants within 120 days, as required by Fed. R. Civ.P. 4(m), made applicable to adversary proceedings by Fed. R. Bankr. P. 7004. It is uncontested, and plaintiff so admitted at the pretrial held on November 15, 2013, that service on the defendants had not been performed. As stated at the hearing, a cross reference in the bankruptcy docket to the filing of a related adversary proceeding, which was electronically noticed to debtor's counsel, does not constitute service on the defendants. The court notes that the pretrial scheduled for October 18, 2013 was indeed rescheduled to November 15, 2013, but was so at the request of the plaintiff. Intensity of contested matters in the bankruptcy petition does not excuse the failure to serve summons of the

1 complaint objecting to the dischargeability of plaintiff's claim, which
2 is a time sensitive action. The court further notes that plaintiff did
3 not request an extension of time to serve summons prior to the expiration
4 of the 120-day period. Dismissal under Rule 4(m) is generally without
5 prejudice, and this court is not specifically deviating from said
6 principle. However, if dismissal affects the timeliness of a subsequent
7 filing, is a matter to be raised and considered if and when another
8 action is filed. Judgment will be entered dismissing the adversary
9 proceeding for failure to serve summons within 120 days as required by
10 Fed. R. Civ.P. 4(m), made applicable to adversary proceedings by Fed. R.
11 Bankr. P. 7004.
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14 SO ORDERED.

15 San Juan, Puerto Rico, this 27 day of November, 2013.
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18 Enrique S. Lamoutte Inclan
19 U.S. Bankruptcy Judge

20 CC: DEBTOR(S)
21 FERNANDO VIGIL FERNANDEZ
22 CLARISSA PIOVANETTI LOPEZ DE VICTORIA
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